



**Netherlands**

# DAC 6 Domestic Implementation

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## General information

<b>Territory</b>	Netherlands
<b>Tax authority</b>	Nederlandse rijksbelastingdienst
<b>Status of legislation</b>	<p>Entered into force.</p> <p>Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 28 February 2021.</p> <p>Reportable transactions that have been made available for implementation or for which first implementation step took place between 1 July 2020 and 31 December 2020 need to be reported by 31 January 2021.</p> <p>Reportable transactions that have been made available for implementation or for which first implementation step took place after 1 January 2021 need to be reported within 30 days.</p> <p>Decree with administrative guidelines has been published.</p>
<b>Taxes covered</b>	Corporate income tax, income tax, wage tax, (dividend) withholding tax, real estate transfer tax, miscellaneous taxes and duties.
<b>Taxes excluded</b>	VAT, customs, excise duties, social security contributions.
<b>Domestic transactions</b>	No

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## Definitions further clarified by guidance

<b>Relevant taxpayer</b>	Any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement.
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**Associated enterprise**

**A person who is related to another person in at least one of the following ways:**

- A person participates in the management of another person by being in a position to exercise a significant influence over the other person
- A person participates in the control of another person through a holding that exceeds 25% of the voting rights
- A person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25% of the capital
- a person is entitled to 25% or more of the profits of another person.

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**Marketable arrangement**

A cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised.

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**Cross-border arrangement**

**An arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:**

- Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction
- One or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction
- One or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment
- One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction
- Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

An arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part.

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**Intermediary**

Any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement.

**Tax advantage** Not defined. In parliamentary explanation is referred to the European Commission Recommendation of 6 December 2012 on aggressive tax planning (2012/772/EU), paragraph 4.

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**Made available for implementation** Currently no guidance has been given by the Dutch authorities on this point.

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**Hallmark** A characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance.

### 3 Additional hallmarks

**Additional hallmarks** None

### 4 Operation of legal professional privilege (LPP)

**Operation of legal professional privilege (LPP)** When the intermediary is bound by LPP, they are required to notify any and all other intermediaries that the reporting obligation automatically rests with them. If there are no other intermediaries, they are required to notify the relevant taxpayer that the reporting obligation rests with the taxpayer.

### 5 Reporting deadline

**Intermediaries**

**As of 1 January 2021 within 30 days following:**

- the day after the reportable cross-border arrangement is made available for implementation; or
- the day after the reportable cross-border arrangement is ready for implementation; or
- the moment when the first step in the implementation of the reportable cross-border arrangement is made, whichever occurs first.

In addition, intermediaries are also required to file information within 30 days beginning on the day after they provided aid, assistance or advice relating to the cross-border arrangement.

**Intermediaries**

For marketable arrangements, the intermediary is required to file a periodic report with all new reportable cross-border arrangements every 3 months.

Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 28 February 2021.

Reportable transactions that have been made available for implementation or for which first implementation step took place between 1 July 2020 and 31 December 2020 need to be reported by 31 January 2021.

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**Users (where LPP applies)**

**As of 1 January 2021 within 30 days following:**

- the day after the reportable cross-border arrangement is made available for implementation; or
- the day after the reportable cross-border arrangement is ready for implementation; or
- the moment when the first step in the implementation of the reportable cross-border arrangement is made, whichever occurs first.

Reportable transactions for which first implementation step took place between 25 June 2018 and 1 July 2020 need to be reported by 28 February 2021.

Reportable transactions that have been made available for implementation or for which first implementation step took place between 1 July 2020 and 31 December 2020 need to be reported by 31 January 2021.

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**Reporting principles for intermediary**

**Circumstances in which intermediary is obliged to report**

Intermediary is obliged to report if it is within their knowledge that they are intermediary relating to a reportable cross-border arrangement.

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**Obligation to inform user what data was communicated**

No

**Priority of reporting where multi member state reporting obligations exist**

**Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:**

- The Member State where the intermediary is resident for tax purposes
- The Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided
- The Member State which the intermediary is incorporated in, or governed by the laws of
- The Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy.

**Circumstances under which intermediary not required to report**

In case of multiple reporting obligations, the intermediary shall be exempt from filing if it has proof that the same information has been filed in another Member State.

The intermediary is also exempt from filing the information if he is bound by LPP and has notified the other intermediaries or in absence thereof, the relevant taxpayer.

**What will the tax authorities provide for the notification received**

The tax authorities will provide a unique ArrangementID and DisclosureID and a confirmation email, that has to be kept in the administration.

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**Reporting principles for taxpayer**

**Circumstances in which taxpayer is obliged to report**

**The relevant taxpayer is obliged to report if:**

- no intermediary was involved in the design, marketing, organising or making available for implementation or managing the implementation of a reportable cross-border arrangement; or
- They have been notified by the intermediary that the intermediary is bound by legal professional privilege.

**Priority of reporting where multiple taxpayers are involved**

Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

- The Member State where the relevant taxpayer is resident for tax purposes
- The Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement
- The Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State
- The Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

**Circumstances under which taxpayer not required to report**

Where there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof that the same information has been filed in another Member State.

**Proof that reporting obligation is satisfied by other taxpayer**

Reference to ArrangementID and DisclosureID that are provided upon reporting by other taxpayer.

## 8 Reporting principles applicable to all

**Language**

Dutch and English. Particularities about the hallmarks and the domestic law applicable to and the summary of the reportable cross-border arrangement have to be provided also in English.

## 9 Penalties

**Circumstances in which penalties may apply**

Incomplete, late, or non-filing.

**Amount**

EUR 670,000 per 1 January 2021. Dutch authorities have mentioned that the penalty has to be proportionate. Conditions that could lower the penalty will be taken into account.

## 10 Country specifics

**Country specifics / deviation from EU directive**

None



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